

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TERRY ANDERSON	§	
(aka Terri Blackburn)		
v.	§	CIVIL ACTION NO. 6:08cv216
		(Crim. No. 6:96cr50)
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Terry Anderson filed this motion which has been construed as a motion to vacate or correct her sentence under 28 U.S.C. §2255, asking that her sentence be modified. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Anderson says that she received concurrent sentences of 360 and 240 months, for conspiracy to manufacture and distribute methamphetamine and conspiracy to launder money. She says that in May of 2007, the U.S. Sentencing Commission proposed changes, including what she calls "Amendment 12," which she says would have the effect of reducing her offense level from 42 to 40. Anderson says that she should be re-sentenced and that when the Court does so, the fact that the Sentencing Guidelines are now advisory should be taken into account, and so a new Guideline range should be calculated for her using the factors set out in 18 U.S.C. §3553(a).

After review of the pleadings, the Magistrate Judge issued a Report on June 27, 2008, recommending that the motion to vacate or correct sentence be denied. The Magistrate Judge observed that the amendment to the Guidelines to retroactively reduce offense levels applies to inmates sentenced for offenses involving crack cocaine, but Anderson was not convicted of or sentenced for an offense involving crack cocaine. The Magistrate Judge further stated that the fact that the Guidelines are now advisory, under United States v. Booker, 543 U.S. 220, 125 S.Ct. 738

(2005), did not afford Anderson any basis for relief because the Booker decision does not apply retroactively. United States v. Gentry, 432 F.3d 600, 605-06 (5th Cir. 2005). Finally, the Magistrate Judge recommended that Anderson be denied a certificate of appealability *sua sponte*.

A copy of the Magistrate Judge's Report was sent to Anderson at her last known address, return receipt requested, but no objections have been received; accordingly, Anderson is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly


ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence under 28 U.S.C. §2255 is DISMISSED with prejudice. It is further

ORDERED that the Movant Terry Anderson is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 15th day of August, 2008.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE